

Federal Communications Commission

In the Matter of

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992

MM Docket No. 92-266

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Rate Regulation

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF INTERNATIONAL FAMILY ENTERTAINMENT, INC.

International Family Entertainment, Inc. ("IFE"), in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding (released December 24, 1992), hereby files its comments concerning rate regulation under the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act"). It is absolutely crucial that the Commission's rate regulations allow operators to pass through increases in their programming costs in the marketplace, without the need for regulatory approval. (See NPRM ¶¶54, 83). Only if the market can function in this way will program vendors be able to produce the new and innovative programs that the public wants and deserves, and production of which Congress intended to encourage in the Cable Act. Cable Act §§2(b)(2), (3).

A. IFE's Interest in this Proceeding

1. IFE owns and operates The Family Channel, a 24-hour per day cable television network that is primarily distributed through cable television systems throughout the United States.

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The Family Channel provides family-oriented entertainment, including original made-for-television movies, dramatic and comedy series, inspirational programs and children's programming.

2. The Family Channel is a leader among basic cable networks in the development of original programming. Since September 1988, it has developed, through co-production arrangements, approximately \$245 million of original programming for the network, at a cost to IFE of approximately \$91 million.

3. IFE has had the capacity to produce this volume of quality original programming because of its ability to charge fees to cable operators for The Family Channel. More important, the company's ability to continue to produce new and innovative programs is dependent on revenues generated by future increases in fees paid by cable operators -- revenues that IFE is committed to reinvesting in original programming.

4. It is vitally important that IFE and other program vendors continue to be able to produce high-quality original programming. Consumers' interests will be best served if a variety of new and innovative programming becomes available in the marketplace. Indeed, one of the primary goals of the Cable Act is to allow for the marketplace creation and availability of new programs. See Cable Act §§ 2(b)(2) and (3). IFE's comments are designed to ensure that any regulations promulgated by the Commission to regulate rates will encourage program vendors' efforts to produce original programming, while still permitting restraints on prospective rate increases by cable systems not subject to effective competition.

**B. Cable Operators Should Be Permitted to
Pass Through Their Programming Costs**

5. In order to give program vendors the financial flexibility necessary to produce innovative new programs, the Commission's rate regulations must permit cable operators to pass through increases in their programming costs to subscribers in the marketplace, without the need for regulatory approval. (See NPRM ¶¶ 54, 83). As the Commission states in the NPRM, pass-throughs are contemplated in the legislative history of the Act. NPRM at n. 80, citing House Report at 82.

6. The Cable Act is not intended to regulate the prices charged by program producers and there is no Congressional finding in the Cable Act that these prices have been too high.^{1/} Thus, there is thus no justification in the Cable Act -- or in sound policy -- for interfering with the free market pricing of new programs and services by program vendors, or in marketplace decisions by cable operators concerning pricing to subscribers to reflect the increased costs of programming. See Cable Act §§2(b)(2) and (3) (expressing Congressional intention to rely on the market to the maximum extent feasible).

7. If the Commission's rules were to require cable operators to seek regulatory approval for price adjustments based on programming costs, then operators would be forced to spend substantial time and money in seeking regulatory approvals each

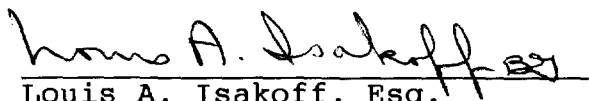
^{1/} The problems incident to vertical integration are a different matter and are dealt with in provisions of the Cable Act dealing specifically with unfair price discrimination by integrated operations, not by general rate regulations.

time that a programmer needed to impose new charges for original, innovative programming. This would be likely to lead some operators to refuse to allow any price increases by programmers and to refuse to carry any new services that would increase their costs. Moreover, even if certain multichannel video operators were willing to bear the costs of regulatory approvals, there would be long delays before any increase could be authorized; and thus would result in delays in operators' willingness to pay the prices necessary for program vendors to have the resources to finance innovative program projects. In any of these circumstances, the revenue of program producers would substantially decline and there would be little if any production of original programming. It would then be the subscribers who suffered from the loss of new programs. This is certainly not the result Congress intended, nor is it in the public interest.

CONCLUSION

For all the above reasons, whatever ratemaking methodology is adopted, the Commission's rate regulations must permit multichannel video operators to pass through the costs of programs in the marketplace.

Respectfully submitted,


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Date: January 27, 1993

CERTIFICATE OF SERVICE

I, Louis A. Isakoff, hereby certify that I have this 27th day of January, 1993, caused to be hand delivered copies of the foregoing "COMMENTS OF INTERNATIONAL FAMILY ENTERTAINMENT, INC." to the following:

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